

ORIGINAL

OPEN MEETING AGENDA ITEM



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Laura M. Kam (AZ Bar No. 025918)  
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**DLA PIPER LLP (US)**  
2525 E. Camelback Road, Suite 1000  
Phoenix, AZ 85016-4232  
Tel: 480.606.5100  
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2009 JUN -9 P 12: 17

Arizona Corporation Commission

DOCKETED

JUN - 9 2009

AZ CORP COMMISSION  
DOCKET CONTROL

Attorneys for Merrill Lynch, Pierce, Fenner &  
Smith, Incorporated

DOCKETED BY

ARIZONA CORPORATION COMMISSION

CASE NO. S-03497A-09-0242

In re Merrill Lynch, Pierce, Fenner &  
Smith, Incorporated

**MOTION AND CONSENT OF LOCAL  
COUNSEL FOR TEMPORARY PRO  
HAC VICE ADMISSION OF TIMOTHY  
P. BURKE**

Undersigned counsel, pursuant to Rule 38 of the Rules of the Supreme Court of Arizona, moves the Commission, for good cause shown, to temporarily admit Timothy P. Burke as counsel *pro hac vice* in this action. Mr. Burke desires temporary admission *pro hac vice* to appear on behalf of his client, Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") at the open meeting before the Arizona Corporation Commission, scheduled for June 11, 2009. Due to the recent rescheduling of the presentment of the Merrill Lynch proposed order and consent to the Commission, from July 9, 2009, as previously scheduled, to June 11, 2009, it is necessary for Mr. Burke to obtain *pro hac vice* admission on short notice.

Pursuant to Rule 38, Mr. Burke has submitted the following to the State Bar of Arizona: (i) original Verified Application for Appearance *Pro Hac Vice*; (ii) original Certificates of Good Standing; and (iii) the filing fee required by Rule 38. A copy of those materials is attached as Exhibit 1. Laura M. Kam, a member in good standing of the

1 State Bar of Arizona, has not yet received the State Bar of Arizona's Notice of Receipt.  
2 These application materials were submitted to the State Bar on June 8, 2009. Because the  
3 open meeting at which the proposed consent order will be considered by the Commission  
4 is set for June 11, 2009, counsel for Merrill Lynch respectfully request that Mr. Burke be  
5 permitted to temporarily appear *pro hac vice*, pending completion of the application  
6 process.

7 RESPECTFULLY SUBMITTED this 9th day of June, 2009.

8  
9 DLA PIPER LLP (US)

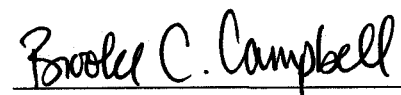
10  
11 By   
12 LAURA M. KAM  
13 Attorneys for Respondent

14 Original and 13 copies of the foregoing  
15 hand-delivered this 9th day of June, 2009, to:

16 Cheryl Farson  
17 General Counsel  
18 Securities Division  
19 Arizona Corporation Commission  
1300 West Washington Avenue  
Phoenix, AZ 85007

20 Copy of the foregoing mailed  
21 this 9th day of June, 2009, to:

22 State Bar of Arizona  
23 4201 North 24th Street, Suite 200  
24 Phoenix, AZ 85016

25  
26   
27  
28

## **EXHIBIT 1**

# BINGHAM

Timothy P. Burke  
Direct Phone: 617.951.8620  
Direct Fax: 617.951.8736  
timothy.burke@bingham.com

June 5, 2009

**Via UPS**

State Bar of Arizona  
Pro Hac Vice  
4201 N. 24th Street  
Suite 200  
Phoenix, AZ 85016

**Re: Nonresident Attorney Pro Hac Vice Application**

To State Bar of Arizona:

Enclosed is a Nonresident Attorney Pro Hac Vice Application, requesting admission for a matter, In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Case Number S-03497A-09-0242, before the Arizona Corporation Commission. It would be greatly appreciated if this request could be expedited as a hearing is scheduled for June 11, 2009.

Please contact me if you have any questions.

Sincerely,

  
Timothy P. Burke

Enclosure

cc: Laura Kam, Esq.

Boston  
Hartford  
Hong Kong  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
Walnut Creek  
Washington

Bingham McCutchen LLP  
One Federal Street  
Boston, MA 02110-1726

T 617.951.8000  
F 617.951.8736  
bingham.com

A/73057691.1/0338420-0000332225



Attn: Pro Hac Vice Dept  
PO Box 53099  
Phoenix, AZ 85072-3099  
Phone: 602-340-7239

For Official Use Only

App# \_\_\_\_\_  
Bar Number# \_\_\_\_\_

### Application for Appearance Pro Hac Vice

#### **PART I: Applicant Information**

Name of Applicant: Timothy P. Burke

Firm/Company Name: Bingham McCutchen LLP

Office Address: One Federal Street, Boston, MA 02110

Telephone: 617-951-8620 Fax: 617-951-8736 Email Address: timothy.burke@bingham.com

Residence Address: \_\_\_\_\_

Title of cause or case where applicant seeks to appear: In re Merrill Lynch Pierce, Fenner & Smith Incorporated

Docket Number: S-03497A-09-0242

Court, Board, or Administrative Agency: Arizona Corporation Commission

Party on whose behalf applicant seeks to appear: Merrill Lynch Pierce, Fenner & Smith Incorporated

Pursuant to Arizona Supreme Court Rule 38(i)(3), the applicant shall complete the information below:

Courts to Which Applicant Has Been Admitted:

*(Attach additional pages if needed)*

Date of Admission:

Bar Number:

Supreme Judicial Court of Massachusetts

2/11/1992

558893

New York Appellate Division, Second Department

1/1/1992

2463669

☒ Applicant is a member in good standing in such courts.

☒ Applicant is not currently disbarred or suspended in any court.

Applicant ☐ is / ☒ is not (select one) currently subject to any pending disciplinary proceeding or investigation by any court, agency or organization authorized to discipline attorneys at law.

In the preceding three (3) years, applicant has filed applications to appear as counsel under AZ ST S.Ct., Rule 38(a) in the following:

Title of Matter:

Docket #:

Court or Agency:

App Granted? (Y/N)

\_\_\_\_\_

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This case or cause ☐ is / ☒ is not (select one) a related or consolidated matter for which applicant has previously applied to appear pro hac vice in Arizona. If this matter is a related or consolidated with any previous application, Applicant certifies that he/she will review and comply with appropriate rules of procedure as required in the underlying cause.

If applicable, please provide related or consolidated matter application or docket# \_\_\_\_\_

**PART II: Local Counsel Information**

Name of Arizona Local Counsel: Laura M. Kam

State Bar of Arizona Number: 025918

Address: DLA Piper LLP; 2525 East Camelback Road; Suite 1000; Phoenix, Arizona 85016-4232

Telephone: (480) 606-5118 Fax: (480) 606-5518 Email Address: laura.kam@dlapiper.com

☒ Local Counsel is a member in good standing.

☒ Local Counsel associating with a nonresident attorney in a particular cause shall accept joint responsibility with the nonresident attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.

**PART III: Parties and Certification**

Name(s) of each party in this cause and name and address of all counsel of record:

Party:	Counsel of Record:	Address:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

☒ Applicant is including with this application a nonrefundable application fee, payable to the State Bar of Arizona, in the amount of \$460.00. Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in subparagraph (f) of this rule.

☒ Applicant is furnishing a certificate from the state bar or from the clerk of the highest admitting court of each state, territory, or insular possession of the United States in which the nonresident attorney has been admitted to practice law certifying the nonresident attorney's date of admission to such jurisdiction and the current status of the nonresident attorney's membership or eligibility to practice therein. The certificate furnished shall be no more than forty-five (45) days old.

Applicant certifies the following:

1. Applicant shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Rule 46(b) Rules of the Supreme Court.
2. Applicant will review and comply with appropriate rules of procedure as required in the underlying cause.
3. Applicant understands and shall comply with the standards of conduct required of members of the State Bar of Arizona.

**Verification**

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_ ss.

I, Mich, swear that all statements in the application are true, correct and complete to the best of my knowledge and belief.

Dated: 6-1-09

Applicant's Signature: Timothy P. Burke

SUBSCRIBED AND SWORN TO before me this 1st day of June, 2009, by

Timothy P. Burke  
Name of Applicant

 MICHELE J. SMITH  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
March 2, 2012  
Michele J. Smith  
Notary Public

# COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the **eleventh** day of **February** A.D. **1992**, said Court being the highest Court of Record in said Commonwealth:

**Timothy P. Burke**

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court\*.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this **third** day of **June**

in the year of our Lord **two thousand and nine**.



  
MAURA S. DOYLE, Clerk

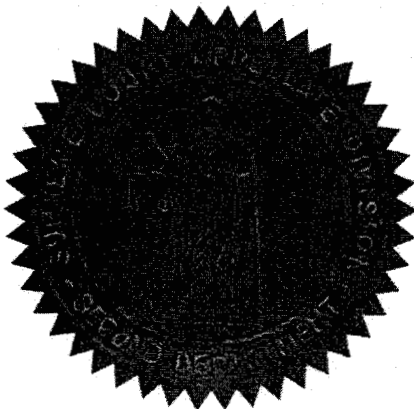
\* Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.



**Appellate Division of the Supreme Court  
of the State of New York  
Second Judicial Department**

I, James Edward Pelzer, Clerk of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, do hereby certify that **Timothy P. Burke** was duly licensed and admitted to practice as an Attorney and Counselor-at-Law in all the courts of the State, according to the laws of the State and the court rules and orders, on the 4<sup>th</sup> day of **March 1992**, has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counselors-at-Law on file in my office, has duly registered with the administrative office of the courts, and according to the records of this court is in good standing as an Attorney and Counselor-at-Law.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Appellate Division on June 02, 2009.



*James Edward Pelzer*

Clerk of the Court



**BINGHAM McCUTCHEN LLP**ONE FEDERAL STREET  
BOSTON, MASSACHUSETTS 02110-1726**VENDOR #: 200069**  
**State Bar of Arizona****DATE: 05/28/2009**  
**CHECK NO.: 10149443**

DATE	INVOICE	VOUCHER	BARCODE	AMOUNT	DISCOUNT	PAID
05-27-2009	FEE052809	798012	8247630	460.00	0.00	460.00
TOTAL:						460.00

FOR INQUIRIES, PLEASE CALL OUR A/P DEPT AT 617-951-4888 OR EMAIL "ACCOUNTS.PAYABLEBOS@BINGHAM.COM"